



General Assembly

January Session, 2005

Substitute Bill No. 6772

* HB06772ENVPD_032905 *

**AN ACT CONCERNING FLOOD MANAGEMENT AND THE STREAM
CHANNEL ENCROACHMENT PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 25-68b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 As used in sections 25-68b to 25-68h, inclusive, as amended by this
4 act:

5 (1) "Activity" means any proposed state action in a floodplain or
6 any proposed state action that impacts natural or man-made storm
7 drainage facilities [, including, but not limited to, the following: (a)
8 Any structure, obstruction or encroachment proposed for
9 emplacement within the floodplain area; (b) any proposal for site
10 development which increases peak runoff rates; (c) any grant or loan
11 which affects land use, land use planning or the disposal of state
12 properties in floodplains, or (d) any program regulating flood flows
13 within the floodplain] that are located on property that the
14 commissioner determines to be controlled by the state;

15 (2) "Base flood" means that flood which has a one per cent chance of
16 being equaled or exceeded in any year, as defined in regulations of the
17 National Flood Insurance Program (44 CFR 59 et seq.) or that flood
18 designated by the commissioner pursuant to section 25-68c. Any flood

19 so designated by the commissioner shall have at least a one per cent
20 chance of being equaled or exceeded in any year. Such flood may be
21 designated as the A or V zones on maps published by the National
22 Flood Insurance Program. The "base flood for a critical activity" means
23 the flood that has at least a .2 per cent chance of being equaled or
24 exceeded in any year. Such flood may be designated as the B zone on
25 maps published for the National Flood Insurance Program;

26 (3) "Commissioner" means the Commissioner of Environmental
27 Protection;

28 (4) "Critical activity" means any activity, including, but not limited
29 to, the treatment, storage and disposal of hazardous waste and the
30 siting of hospitals, housing for the elderly, schools or residences, in the
31 .2 per cent floodplain in which the commissioner determines that a
32 slight chance of flooding is too great;

33 (5) "Floodplain" means that area located within the real or
34 theoretical limits of the base flood or base flood for a critical activity;

35 (6) "Flood-proofing" means any combination of structural or
36 nonstructural additions, changes or adjustments which reduce or
37 eliminate flood damage to real estate or improved real property, to
38 water and sanitary facilities, and to structures and their contents;

39 (7) "Freeboard" means a safety factor, expressed in feet above a
40 calculated flood level, that compensates for unknown factors
41 contributing to flood heights greater than the calculated height,
42 including, but not limited to, ice jams, debris accumulations, wave
43 actions, obstructions of bridge openings and floodways, the effects of
44 urbanization on the hydrology of a watershed, loss of flood storage
45 due to development and sedimentation of a watercourse bed;

46 (8) "Proposed state action" means individual activities or a sequence
47 of planned activities proposed to be undertaken by a state department,
48 institution or agency, any state or federal grant or loan proposed to be
49 used to fund a project that affects land use, or proposed transfer of real

50 property belonging to the state.

51 Sec. 2. Section 25-68c of the general statutes is repealed and the
52 following is substituted in lieu thereof (*Effective October 1, 2005*):

53 The commissioner shall have the following powers and duties
54 under sections 25-68b to 25-68h, inclusive, as amended by this act:

55 (1) To coordinate, monitor and analyze the floodplain management
56 activities of state and local agencies;

57 (2) To coordinate flood control projects within the state and be the
58 sole initiator of a flood control project with a federal agency;

59 (3) To act as the primary contact for federal funds for floodplain
60 management activities sponsored by the state;

61 (4) To regulate actions by state agencies affecting floodplains except
62 conversion by The University of Connecticut of commercial or office
63 structures to an educational structure;

64 (5) To regulate proposed state actions that impact natural or man-
65 made storm drainage facilities located on property that the
66 commissioner determines to be controlled by the state, including, but
67 not limited to, programs that regulate flood flows within a floodplain
68 and site development that increases peak runoff rates;

69 [(5)] (6) To designate a repository for all flood data within the state;

70 [(6)] (7) To assist municipalities and state agencies in the
71 development of comprehensive floodplain management programs;

72 [(7)] (8) To determine the number and location of state-owned
73 structures and uses by the state in the floodplain and to identify
74 measures to make such structures and uses less susceptible to flooding
75 including flood-proofing or relocation;

76 [(8)] (9) To mark or post the floodplains within lands owned, leased
77 or regulated by state agencies in order to delineate past and probable

78 flood heights and to enhance public awareness of flood hazards;

79 [(9)] (10) To designate the base flood or base flood for a critical
80 activity where no such base flood is designated by the National Flood
81 Insurance Program. The commissioner may add a freeboard factor to
82 any such designation;

83 [(10)] (11) To require that any flood control project be designed to
84 provide protection equal to or greater than the base flood.

85 Sec. 3. Section 25-68d of the general statutes is repealed and the
86 following is substituted in lieu thereof (*Effective October 1, 2005*):

87 (a) No state agency shall undertake an activity or a critical activity
88 within or affecting the floodplain without first obtaining an approval
89 or approval with conditions from the commissioner of a certification
90 submitted in accordance with subsection (b) of this section or
91 exemption by the commissioner from such approval or approval with
92 conditions in accordance with subsection (d) of this section.

93 (b) Any state agency proposing an activity or critical activity within
94 or affecting the floodplain shall submit to the commissioner
95 information certifying that:

96 (1) The proposal will not obstruct flood flows or result in an adverse
97 increase in flood elevations, significantly affect the storage or flood
98 control value of the floodplains, cause an adverse increase in flood
99 velocities, or an adverse flooding impact upon upstream, downstream
100 or abutting properties, or pose a hazard to human life, health or
101 property in the event of a base flood or base flood for a critical activity;

102 (2) The proposal complies with the provisions of the National Flood
103 Insurance Program (44 CFR 59 et seq.), and any floodplain zoning
104 requirements adopted by a municipality in the area of the proposal
105 and the requirements for stream channel encroachment lines adopted
106 pursuant to the provisions of section 22a-342;

107 (3) The agency has acquired, through public or private purchase or

108 conveyance, easements and property in floodplains when the base
109 flood or base flood for a critical activity is elevated above the
110 increment authorized by the National Flood Insurance Program or the
111 flood storage loss would cause adverse increases in such base flood
112 flows;

113 (4) The proposal promotes long-term nonintensive floodplain uses
114 and has utilities located to discourage floodplain development;

115 (5) The agency has considered and will use to the extent feasible
116 flood-proofing techniques to protect new and existing structures and
117 utility lines, will construct dikes, dams, channel alterations, seawalls,
118 breakwaters or other structures only where there are no practical
119 alternatives and will implement stormwater management practices in
120 accordance with regulations adopted pursuant to section 25-68h; and

121 (6) The agency has flood forecasting and warning capabilities
122 consistent with the system maintained by the National Weather
123 Service and has a flood preparedness plan.

124 (c) The commissioner shall make a decision either approving,
125 approving with conditions or rejecting a certification [within] not later
126 than ninety days [of] after receipt of such certification, except that in
127 the case of an exemption any decision shall be made [within] ninety
128 days [of] after the close of the hearing. If a certification is rejected, the
129 agency shall be entitled to a hearing in accordance with the provisions
130 of sections 4-176e, 4-177, 4-177c and 4-180.

131 (d) Any state agency proposing an activity or critical activity within
132 or affecting the floodplain may apply to the commissioner for
133 exemption from the provisions of subsection (b) of this section. Such
134 application shall include a statement of the reasons why such agency is
135 unable to comply with said subsection and any other information the
136 commissioner deems necessary. The commissioner, [after public notice
137 of the application and an opportunity for a public hearing in
138 accordance with the provisions of chapter 54,] at least thirty days
139 before approving, approving with conditions or denying any such

140 application, shall publish once in a newspaper having a substantial
141 circulation in the affected area notice of: (1) The name of the applicant;
142 (2) the location and nature of the requested exemption; (3) the tentative
143 decision on the application; and (4) additional information the
144 commissioner deems necessary to support the decision to approve,
145 approve with conditions or deny the application. There shall be a
146 comment period following the public notice during which period
147 interested persons and municipalities may submit written comments.
148 After the comment period, the commissioner shall make a final
149 determination to either approve the application, approve the
150 application with conditions or deny the application. The commissioner
151 may hold a public hearing prior to approving, approving with
152 conditions or denying any application if in the discretion of the
153 commissioner the public interest will be best served thereby, and the
154 commissioner shall hold a public hearing upon receipt of a petition
155 signed by at least twenty-five persons. Notice of such hearing shall be
156 published at least thirty days before the hearing in a newspaper
157 having a substantial circulation in the area affected. The commissioner
158 may approve or approve with conditions such exemption if [he] the
159 commissioner determines that [(1)] (A) the agency has shown that the
160 activity or critical activity is in the public interest, will not injure
161 persons or damage property in the area of such activity or critical
162 activity, complies with the provisions of the National Flood Insurance
163 Program, and, in the case of a loan or grant, the recipient of the loan or
164 grant has been informed that increased flood insurance premiums may
165 result from the activity or critical activity, or [(2)] (B) in the case of a
166 flood control project, such project meets the criteria of [subdivision (1)]
167 subparagraph (A) of this subdivision and is more cost-effective to the
168 state and municipalities than a project constructed to or above the base
169 flood or base flood for a critical activity. Following approval for
170 exemption for a flood control project, the commissioner shall provide
171 notice of the hazards of a flood greater than the capacity of the project
172 design to each member of the legislature whose district will be affected
173 by the project and to the following agencies and officials in the area to
174 be protected by the project: The planning and zoning commission, the

175 inland wetlands agency, the director of civil defense, the conservation
176 commission, the fire department, the police department, the chief
177 elected official and each member of the legislative body, and the
178 regional planning agency. Notice shall be given to the general public
179 by publication in a newspaper of general circulation in each
180 municipality in the area in which the project is to be located.

181 (e) The failure of any agency to comply with the provisions of this
182 section or any regulations adopted pursuant to section 25-68c, as
183 amended by this act, shall be grounds for revocation of the approval of
184 the certification.

185 (f) The provisions of this section shall not apply to any proposal by
186 the department of transportation for a project within a drainage basin
187 of less than one square mile.

188 Sec. 4. Section 22a-349 of the general statutes is repealed and the
189 following is substituted in lieu thereof (*Effective October 1, 2005*):

190 (a) The provisions of sections 22a-342 to 22a-348, inclusive, shall not
191 be deemed to restrict agricultural or farming uses of lands located
192 within the stream channel encroachment lines including the building
193 of fences, provided this section shall not apply to farm buildings and
194 farm structures.

195 (b) The following operations and uses shall be permitted within
196 stream channel encroachment lines, as of right: (1) Lawns, gardens or
197 vegetative plantings, (2) split rail fences, (3) open decks attached to
198 residential structures, properly anchored in accordance with the
199 Uniform Construction Code and applicable local building codes, (4)
200 construction of minor structures to an existing facility for the purpose
201 of providing handicap accessibility pursuant to the Uniform
202 Construction Code and applicable local building codes, (5) temporary
203 greenhouses or hoopouses constructed without permanent
204 foundations and anchored pursuant to the Uniform Construction Code
205 and applicable local building codes, (6) placement of fish habitat
206 enhancement devices performed by or approved by the Commissioner

207 of Environmental Protection, (7) demolition of an existing structure, (8)
 208 backfilling of foundations, (9) flood-proofing of existing structures,
 209 including, but not limited to, elevating structures in accordance with
 210 Federal Emergency Management Agency standards, (10) repair or
 211 installation of septic systems, (11) construction of irrigation systems,
 212 (12) installation of water monitoring structures performed by or
 213 approved by the Commissioner of Environmental Protection, (13)
 214 installation of dry hydrants, (14) driveway and roadway repair and
 215 maintenance that does not raise the existing road grade more than
 216 three inches, or (15) patios or walkways constructed at grade.

217 Sec. 5. Subsection (d) of section 22a-349a of the general statutes is
 218 repealed and the following is substituted in lieu thereof (*Effective*
 219 *October 1, 2005*):

220 (d) Any general permit issued under [this] subsection (a) of this
 221 section [shall] may require that any person, firm or corporation
 222 intending to conduct an activity covered by such general permit [shall,
 223 at least sixty days before initiating such activity,] give written notice of
 224 such intention to the inland wetlands agency, zoning commission,
 225 planning commission or combined planning and zoning commission
 226 and conservation commission of any municipality which will or may
 227 be affected by such activity. [, and to the department which shall make
 228 such notices available to the public.] The general permit shall specify
 229 the information [which must] required to be contained in the notice.
 230 [An inland wetlands agency, planning and zoning commission,
 231 conservation commission or any person may submit written comments
 232 to the commissioner concerning such activity not later than twenty-five
 233 days prior to the date that the activity is proposed to begin.]

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2005</i>	25-68b
Sec. 2	<i>October 1, 2005</i>	25-68c
Sec. 3	<i>October 1, 2005</i>	25-68d
Sec. 4	<i>October 1, 2005</i>	22a-349

Sec. 5	<i>October 1, 2005</i>	22a-349a(d)
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Joint Favorable Subst. C/R

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